

SENATE RESOLUTION 141
By Jackson

A RESOLUTION to urge the Supreme Court of Tennessee to study and adopt revisions to Rule 11 of the Tennessee Rules of Civil Procedure relative to frivolous lawsuits and the sanctions that may be imposed upon the filing of such lawsuits.

WHEREAS, it is recognized that the Supreme Court of Tennessee has both the inherent and statutory authority to prescribe reasonable rules of practice to govern the Tennessee judicial system and to regulate those who practice law in such system; and

WHEREAS, issues before the General Assembly in the recent past have resulted in the closer examination of Rule 11 of the Tennessee Rules of Civil Procedure relative to frivolous lawsuits and the sanctions that may be imposed upon a finding that a frivolous lawsuit has been filed; and

WHEREAS, frivolous lawsuits not only result in economic and other more intangible damages to the person against whom they are filed but tend to undermine the integrity of the legal profession and the entire judicial system; and

WHEREAS, it is incumbent upon this General Assembly as well as the Supreme Court to continue to explore methods by which the citizens of this state are better protected from the expense, inconvenience and other damages caused by frivolous lawsuits and thereby increase public confidence in the judicial system; now, therefore,

BE IT RESOLVED BY THE SENATE OF THE ONE HUNDRED FOURTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, that the Supreme Court of Tennessee is urged to study and adopt improvements and more stringent sanctions to Rule 11 of the Tennessee Rules of Civil Procedure in a form substantively similar to the following:

Rule 11.01---- Signature.—

Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address, telephone number, and Tennessee Board of Professional Responsibility number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

11.02.

Representations to Court. —

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denial of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

11.03.

(1) Sanctions.

If, after notice and a reasonable opportunity to respond, the court determines that subdivision 11.02 has been violated, the court shall, subject to the conditions stated below, impose appropriate sanctions set out in this subdivision upon the attorneys, law firms, or parties that have violated subdivision 11.02 or are responsible for the violation.

(2) How Initiated.

(a) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision 11.02. If the party is seeking monetary damages as well as other sanctions, with the motion for sanctions the party shall also file a sworn affidavit setting forth any authorized damages made compensable by this rule that were incurred by such party as a result of such violation. The motion and affidavit of damages shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

(b) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision 11.02 and directing an attorney, law firm, or party to show cause why it has not violated subdivision 11.02 with respect thereto.

(3) Imposition of Sanctions; Sanctions Authorized

(a) If the court finds, upon the motion of a party pursuant to subparagraph (2)(a) or pursuant to its own motion pursuant to subparagraph (2)(b) that a violation of subdivision 11.02 has occurred, the court shall award to the party prevailing on the motion the reasonable expenses, including expert witnesses and attorney's fees, incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(b) In addition to the cost of defense expenses awarded pursuant to subparagraph (3)(a), if the court finds, upon the motion of a party pursuant to subparagraph (2)(a) or pursuant to its own motion pursuant to subparagraph (2)(b) that a violation of subdivision 11.02 has occurred, the court may award to the party prevailing on the motion the following:

(1) Monetary damages to compensate for loss of personal or business reputation or relationships, suffered by the party prevailing as a result of the violation of subdivision 11.02, provided such damages were set out in the affidavit filed pursuant to subparagraph (2) and proven to the court; and

(2) Loss of business revenue suffered by the party prevailing as a result of the violation of subdivision 11.02, provided such damages were set out in the affidavit filed pursuant to subparagraph (2) and proven to the court.

(4) Nature of Sanctions; Limitations.

In addition to the sanctions that are or may be imposed pursuant to subparagraph (3), the court shall also impose any sanction for violation of this rule that the court deems necessary to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in this subdivision 11.03, the deterrent sanction may consist of, or include, directives of a nonmonetary nature or an order to pay a monetary penalty into court.

(a) Monetary sanctions pursuant to subdivision 11.03(3) or (4) may not be awarded against a represented party for a violation of subdivision 11.02(2).

(b) Monetary sanctions pursuant to subdivision 11.03(3) or (4) may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(5) Order.

When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

11.04. Inapplicability to Discovery.

Subdivisions 11.01 through 11.03 of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

BE IT FURTHER RESOLVED, that the Advisory Commission on Civil Rules is urged to consider and recommend to the Supreme Court a revision to Rule 11 of the Tennessee Rules of Civil Procedure that is similar in approach to that which is outlined in this resolution at its June 30, 2006, or August 11, 2006, meeting.

BE IT FURTHER RESOLVED, that the Supreme Court of Tennessee is urged to promulgate and present to the General Assembly for approval during the first session of the One Hundred Fifth General Assembly a revision of Rule 11 of the Tennessee Rules of Civil Procedure similar to the suggested language set out in the resolution.

BE IT FURTHER RESOLVED, that a copy of this resolution be presented to the director of the administrative office of the courts for distribution to each member of the Supreme Court of Tennessee and the Advisory Commission on Civil Rules.